

REMARKS

This is a Response to the Office Action mailed April 4, 2008, setting forth a restriction requirement. The Examiner identified two allegedly distinct groups of claims: I. Claims 1-29, to a fastening apparatus classified in class 227, subclass 176.1; and II. Claim 30, drawn to a method of fastening a surgical fastener in endoscopic surgery, classified in class 606.

Applicant provisionally elects to prosecute the claims of Group I. Claims 1-29. The remaining claim consisting of Group II. Claim 30 is withdrawn from consideration without prejudice to continue prosecution of the subject matter in a subsequent application.

The office action also set forth a requirement for election of species. According to the office action, the application contains claims directed to the following species: I. the embodiment of FIG. 1; II. the embodiment of FIG. 2; and III. The embodiment of FIGS. 7-8. Applicant provisionally elects the species of FIGS. 7-8. Claims 1 through 29 are readable on the provisionally elected species.

Despite the provisional election, applicants traverse the restriction requirement. It is respectfully submitted that the Examiner should reconsider the restriction requirement in view of the following. The separate classification of the subject matter under the classification system of the United States Patent and Trademark Office is not conclusive proof of divisibility. Further, under M.P.E.P. §803, the entire application must be examined as a whole when there would not be a serious burden on the Examiner if restriction were not required. The fields of search are believed to be co-extensive for the two groups identified by the Examiner.

Should the Examiner believe that a telephone or personal interview may facilitate resolution of any remaining matters, the Examiner is respectfully requested to contact Applicant's undersigned attorney at the telephone number indicated below.

It is believed that no fee is due for entry of the present amendment, however, if it is determined that a fee is required for entry of the present amendment, the Commissioner is hereby authorized to charge such fee to Deposit Account No. 21-0550 in the name of United States Surgical Corporation.

Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550. TWO (2) COPIES OF THIS SHEET ARE ENCLOSED.

Respectfully submitted,

Dated: May 5, 2008



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